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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/620,665   | 07/16/2003  | Jamshid Karimi       | L8344-1003          | 8648             |
| 2292   | 7590        | 01/13/2006           | EXAMINER            |                  |
| BIRCH STEWART KOLASCH & BIRCH<br>PO BOX 747<br>FALLS CHURCH, VA 22040-0747 |             |                      | CHIN, PAUL T        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3652                |                  |

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/620,665 | <b>Applicant(s)</b><br>KARIMI ET AL. |  |
|                              | <b>Examiner</b><br>PAUL T. CHIN      | <b>Art Unit</b><br>3652              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 30-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of the species of Figs. 1-6 and 8-13, readable on claims 1-29, in the reply filed on September 9, 2005, is acknowledged. The traversal is on the ground(s) that "the method claims 30-37 would not be patentably distinct. This is not found persuasive because a method claim recites providing a tool having a gripping head, providing a bag, placing the bag in the gripping head, folding the open portion of the bag, and pulling the bag with the tool. The process for using the product as claimed can be practiced with another materially different produces such as collecting devices such as trash collecting devices. The requirement is still deemed proper and is therefore made FINAL.

2. Claims 30-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 9, 2005.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "48" has been used to designate both "front portion" and "flexible tabs". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant

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will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "61" (turn off switch). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-11 and 21-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the recited phrase "pull the bag from the head with the refuse container therein" (claims 1,3,21) is not understood as to how "the bag" is pulled from the head. The recited claims are misleading. Moreover, claims 1 and 21 recite "a gripping head on the end of the handle" and further recite "a fixed gripping jaw on the handle" and "a movable gripping jaw". Further, the recited phrases "said operator is a

trigger" (claim 20) and "one of said elements being connected to an operator" (claim 21, lines 4) are confusing. The use of "operator" is misleading.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,3,4,9,10,21,27,28, and 29, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Schmittgens et al. (Des. 429,040).

Schmittgens et al. (Des. 429,040) shows a tool comprising an elongated handle (Fig. 4), a hole at an end of the handle, which can be considered as a thumb hole, for suspending the tool, a gripping head having a fixed jaw and a movable jaw wherein the fixed jaw being connected to one end of the handle, a receiving opening, and a stop (Fig. 1). Note that applicant does not positively recite "a disposal bag" and Schmittgens et al. (Des. 429,040) is capable of receiving a bag or a flash light in the receiving opening. The device has a lever and may be served as a belt clip.

9. Claims 12-15,17-25,27, and 28, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Lemler (3,703,158).

Lemler (3,703,158) discloses a tool comprising an elongated handle (Fig. 3), a gripping head having a fixed jaw and a movable jaw wherein the fixed jaw being connected to one end of the handle, a receiving opening, a stop, a plastic bag (36), and a manual operator to move the jaw (Fig. 3). Note that Lemler (3,703,158) is capable of receiving a flash light in the receiving opening.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 2,5,12-14,22, and 23, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmittgens et al. (Des. 429,040) in view of Malaspina et al. (5,385,376).

Schmittgens et al. (Des. 429,040), as presented in section 7 above, does not show a bag to contain waste. However, Malaspina et al. teaches a device having a bag (108) (Fig. 6) having a flap. Accordingly, it would have been obvious to those skilled in the art to provide a bag on the Schmittgens et al. (Des. 429,040) as taught by Malaspina et al. to safely contain the waste or feces.

12. Claims 1-3 and 9-11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemler (3,703,158) in view of Spear et al. (5,975,601).

Lemler (3,703,158), as presented in section 9 above, does not show a thumb hole for hanging or storage. However, Spear et al. (5,975,601) teaches a hand tool having a hole at one end. Accordingly, it would have been obvious to those skilled in the art to provide a hole at one end of the handle of Lemler (3,703,158) as taught by Spear et al. (5,975,601) for storage or for hanging.

***Allowable Subject Matter***

13. Claims 6,8,16, and 26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (571) 272-6922. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN  
Examiner  
Art Unit 3652